

Appl. No. 10/749,338
Amdt. Dated Jan. 5, 2006
Reply to Office Action of November 21, 2005

REMARKS

Claim Rejection Under 35 U.S.C. 102

Responsive to the rejection of claims 1, 2, 5, 7, and 13 under 35 U.S.C. 102(b) as being anticipated by Shinohara et al. (US 6,474,827), Applicant has amended claim 1 and has cancelled claim 13.

The Examiner indicated in the Final Office Action that claim 6 had set forth allowable subject matter, for which courtesy the Examiner is thanked. Applicant has amended claim 1 to incorporate the subject matter of claim 6 therein. Accordingly, Applicant submits that claim 1, as amended, is now in condition for allowance, the allowance of which is hereby respectfully requested.

Further, Applicant submits dependent claims 2, 5, and 7, based on their dependency on claim 1, are now also in condition for allowance.

Claim Rejection Under 35 U.S.C. 103

Responsive to the rejection of claims 3 and 4 under 35 U.S.C. 103(a) as being anticipated by Shinohara et al. (US 6,474,827), Applicant respectfully traverses as follows.

Claims 3 and 4 depend directly from claim 1, which is in condition for allowance for the reasons set forth above. Accordingly, Applicant submits that claims 3 and 4 are now in condition for allowance, the allowance of which is hereby respectfully requested.

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Allowable Subject Matter

The Examiner has indicated that claims 16 and 17 are allowed and that claims 6, 8-12, and 15 set forth allowable subject matter, for which consideration the Examiner is respectfully thanked.

Claim 6 has been cancelled, the subject matter thereof, instead having been fully incorporated into claim 1, as set forth above. Claims 8 and 15 have been rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant hereby submits that claims 8 and 15 are now in condition for allowance, the allowance of which is hereby respectfully requested.

Further, Applicant submits dependent claims 9-12, based on their dependency on claim 8, are now also in condition for allowance.

Additional Remarks

Applicant submits that the Examiner has improperly made this current Office Action (dated November 21, 2005) Final because the rejection of claims 1-5 and 7 could not have been necessitated by amendment, as only claim 13 was amended in the preceding response. Following the guidelines set forth in MPEP §706.07(a), the Examiner should not have made the current Office Action Final.

Also, the only claim that was amended, claim 13, had been amended to place it in allowable form, as per instructions set forth by the Examiner in the previous Office Action (mailed Oct. 3, 2005). As such, it is arguable whether the rejection of claim 13 was necessitated by Applicant. Applicant merely had relied on guidance provided by the Examiner in that preceding Office Action, and Applicant did not change the scope of claim 13 in

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rewriting it in independent form.

Additionally, claims 1-12, 16, and 17 had actually been indicated to be allowed by the Examiner as part of the preceding Office Action (mailed Oct. 3, 2005). Not only is the Examiner rejecting claims not amended in the prior response, he is withdrawing previously allowed subject matter. It has been a widely held practice in the Office that an Action is not to be made Final when such an Action involves the withdrawal of previously allowed subject matter.

For all of the foregoing reasons, Applicant respectfully requests the withdrawal of the finality accorded in the Office Action dated November 21, 2005.

In view of the foregoing, the present application as defined in the pending claims is considered to be in a condition for allowance, and an action to such effect is earnestly solicited.

Respectfully submitted,

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